DAMANSARA JAYA SDN. BHD.

v.

PEMUNGUT HASIL TANAH PETALING

SUPREME COURT, KUALA LUMPUR
MOHD. JEMURI SERJAN CJ (BORNEO)
HARUN HASHIM SCJ
AJAIB SINGH SCJ
[SC CIVIL APPEAL NO. 01-59-1989]
1 SEPTEMBER 1992

LAND LAW: *Acquisition - Collector of Land Revenue offered compensation to registered owners - Offer rejected as it did not represent true and proper market value - Objections referred to Court - Section 38 of the Land Acquisition Act 1960 - Registered owner sought damages for injurious affection before High Court - Injurious affection was not raised before Collector - Whether registered owner precluded from making claim for injurious affection.*

The appellants were the registered owners of some 365.125 acres of land in the Mukim of Sungai Buluh, in the District of Petaling which was acquired by the State Authority of Selangor under the Land Acquisition Act 1960.

The appellants rejected the compensation awarded by the Collector and objected to the award on the grounds that the award was insufficient in relation to the market value of the land.

Upon reference to the High Court under s. 38 of the Act, the appellants raised a further claim for damages for injurious affection.

The learned Judge of the High Court held that the appellants were precluded from making a claim for injurious affection as no such claim was raised before the Collector. The appellants appealed against this decision.

Held:

[1] An objector is entitled, provided prior leave of the Court is obtained, to make a fresh claim or raise a new ground of objection to an award of the Collector in the course of the reference proceedings at the High Court which he had failed to do at the enquiry before the Collector.

[2] Leave of the Court is obtained by making a separate application to the Court supported by an affidavit explaining the reasons for the additional grounds of objection in accordance with RHC 1980 and must be made before the hearing of the actual reference.

[3] For the reasons stated, the appeal was allowed and the decision of the learned Judge of the High Court was set aside with costs.

[Appeal allowed. No order as to costs.]

[Bahasa Malaysia Translation of Headnote]

UNDANG-UNDANG TANAH: *Pengambilan - Pemungut Hasil Tanah menawarkan pampasan kepada pemilik-pemilik berdaftar-Tawaran ditolak memandangkan ianya tidak melambang nilai pasaran yang sebenar dan wajar - Bantahan dirujuk kepada Mahkamah - Seksyen 38 Akta Pengambilan Tanah 1960 - Pemilik berdaftar menuntut ganti rugi untuk kesan kemudaratan ("injurious affection") di hadapan Mahkamah Tinggi - Kesan kemudaratan ("injurious affection") tidak dibangkitkan di hadapan Pemungut - Sama ada pemilik berdaftar dihalang daripada membuat tuntutan tersebut.*

Pihak perayu merupakan pemilik-pemilik berdaftar 365.125 ekar tanah dalam Mukim Sungai Buluh, dalam Daerah Petaling yang mana telah diambil oleh Pihak Berkuasa Negeri Selangor di bawah Akta Pengambilan Tanah 1960.

Pihak perayu menolak pampasan yang diawardkan oleh Pemungut dan membantah award tersebut atas alasan bahawa award tersebut adalah tidak memadai memandangkan nilai pasaran tanah tersebut.

Bila rujukan dibuat kepada Mahkamah Tinggi di bawah s. 38 Akta tersebut, pihak perayu membangkitkan suatu tuntutan ganti rugi untuk kesan kemudaratan ("injurious affection").

Hakim Mahkamah Tinggi yang bijaksana tersebut memutuskan bahawa pihak perayu dihalang daripada membuat tuntutan untuk kesan kemudaratan memandangkan tiada tuntutan yang sedemikian pernah dituntut di hadapan Pemungut. Perayu merayu terhadap keputusan tersebut.

Diputuskan:

[1] Seseorang pembantah itu adalah berhak, dengan syarat bahawa kebenaran Mahkamah diperolehi terlebih dahulu, untuk membuat tuntutan baru atau membangkitkan alasan bantahan yang baru terhadap award Pemungut semasa prosiding rujukan tersebut di Mahkamah Tinggi di mana beliau gagal berbuat demikian semasa siasatan di hadapan Pemungut.

[2] Kebenaran Mahkamah boleh diperolehi dengan membuat suatu permohonan berasingan kepada Mahkamah dan permohonan ini hendaklah disokong oleh suatu afidavit yang menerangkan alasan-alasan bantahan menurut Kaedah-kaedah Mahkamah Tinggi 1980 dan mestilah dibuat sebelum pendengaran rujukan tersebut.

[3] Atas sebab-sebab yang dinyatakan, rayuan tersebut telah dibenarkan dan keputusan Hakim Mahkamah Tinggi yang bijaksana tersebut telah diketepikan dengan kos.

[Rayuan dibenarkan. Tiada perintah mengenai kos.]

Case referred to:

Collector of Land Revenue v. Looi Lam [1981] 1 MLJ 300 ***(dist)***

Legislation referred to:

Land Acquisition Act 1960, ss. 12(1), 38(1), (2), (3), 45, (2) 47, First Schedule ss. 2, (b), 4, (a), (b)

For the appellants - Eugene Lye (R.R. Sethu with him); M/s. Eugene Lye & Co.
For the respondent - Mohd. Hishamudin b. Mohd. Yunus (State Legal Adviser, Selangor); AG's Chambers

JUDGMENT

Harun Mahmud Hashim SCJ:

In 1980, the State Authority of Selangor acquired the whole (365.125 acres) of Lot 70 Mukim of Sungai Buluh, in the District of Petaling for the public purpose of the Tactical Headquarters of the Royal Malaysian Air Force under the Land Acquisition Act 1960 (the Act). The Collector offered RM65,500 per acre for the acquired land as compensation to the registered owners, Damansara Jaya Berhad (the appellants) but they rejected the offer and claimed they should be compensated at the rate of RM160,000 per acre. The grounds of their objection to the award were:

(a) The award does not represent the true and proper market value of Lot No. 70.

(b) The award made could not, by reason of its amount, have been made in accordance with the recognised or accepted methods adopted or which should have been adopted, for arriving at the market value of Lot No. 70.

(c) The Collector, in determining the amount of the award, has failed to consider, or to give due and proper regard, to all relevant and material facts concerning or affecting Lot No. 70, as well as other lands adjoining thereto or in the same neighbouring or vicinity, belonging to and owned by us or others.

(d) In as much as Lot 373 held under Grant 9549, Lots 96 and 100 held under Certificate of Title No. 4372, Lot 97 held under Grant 8153 Lot 387 held under Certificate 9730 and Lot No. 389 held under Certificate of Title 9731, respectively, all of which said lots belong to and are beneficially owned by us, and adjoin Lot No. 70, and together therewith form a composite estate, the Collector has failed to take into account the damage sustained or likely to be sustained as a result of severing Lot No. 70 from the other aforesaid lots.

(e) The Collector has erred in having failed to take into account or to properly take into account the immediate or potential value of Lot No. 70.

The Collector, at the request of the appellants, referred the objections to the Court under s. 38 of the Act. At the hearing in the High Court, Mr. Eugene Lye for the appellants said there were two heads of claim, *viz*:

(a) The award of the Collector is insufficient in relation to the **market value** of the land; and

(b) Damages for **injurious affection**.

The learned State Legal Adviser who appeared for the Collector, objected to the issue of injurious affection being raised as no such claim was made before the Collector. The learned Judge agreed and held that the appellants are precluded from making a claim for injurious affection. Hence this appeal which is limited to the aforesaid preliminary issue.

The appellants say that it is also the registered owner of adjoining properties which will be injuriously affected by the activities of the air force on the acquired land. At the enquiry before the Collector, no mention was made of such a claim. All the representative of the appellants said at the enquiry was that the acquired land was purchased in 1973 at RM15,000 per acre; that land prices had increased since then by giving examples of recent sales of similar properties in the vicinity and that a fair compensation for its land is RM160,000 per acre.

In its request to the Collector to refer the matter to the Court, the appellants again made no mention of injurious affection. This is not surprising as the objections had to be made within six weeks of the award (s. 38(3) of the Act) and in all probability the prospect of injurious affection may not have been apparent at that time. The appellants' valuation report prepared by a chartered surveyor was not made until 1987 for the purpose of the hearing in the High Court. It is in this report that the claim for injurious affection was raised for the first time by the chartered surveyor. For the purpose of disposing this appeal we do not find it necessary to make a finding whether or not there is in fact injurious affection likely or otherwise in the instant case and we make no such finding.

The question we have to decide is whether the objector to acquired land can raise a fresh claim in the course of the reference under the Act when no such claim was made at the enquiry before the Collector.

Section 12(1) of the Act states:

> On the date appointed under subsection (1) of s. 10 the Collector shall make full enquiry into the value of all scheduled lands and shall as soon as possible thereafter assess the amount of compensation which in his opinion is appropriate in each case, according to the consideration set out in the First Schedule.

The First Schedule sets out the principles relating to the determination of compensation.

Section 2 of the Schedule (in so far as it is material) provides:

> In determining the amount of compensation to be awarded for any scheduled land acquired under this Act there shall be taken into consideration the following matters and no others:
>
> (a) the market value as determined in accordance with s. 1 of this Schedule.
>
> (b) -
>
> (c) -
>
> (d) the damage if any, sustained or likely to be sustained by the person interested at the time of the Collector's taking possession of the land by reason of the acquisition injuriously affecting his other property, whether movable or immovable, in any other manner.
>
> (e) -
>
> (f) -

It is obvious from the provisions of s. 2 of the Schedule, that injurious affection under para. (d) is a separate matter from market value under para. (a) and if injurious affection had been taken into consideration the award of the Collector might well have been different. It is clear, however, from the award that the Collector determined the amount of compensation entirely under para. (a) i.e. on market value only since the total amount of the award of RM23,915,687 is the total sum of RM65,000 per acre multiplied by 365.125 acres. Although the Collector had the power to make an award in respect of injurious affection if the matter was proved to him, he did not do so here for the simple reason that it was not raised when he held the enquiry. Is it too late then to raise it at the reference stage?

An award made by the Court in a reference under s. 38 shall, under s. 47, be in writing signed by the Judge which further prescribes under subsection 2:

> (2) Where such decision comprises an award of compensation it shall specify:-
>
> (a) the amount awarded on account of the market value of the land under para. (a) of s. 2 of the First Schedule;
>
> (b) the amount, if any, deducted under para. (b) of s. 2 of the First Schedule;
>
> (c) the amounts, if any, respectively awarded under paras. (c), (d) and (e) of s. 2 of the First Schedule; and
>
> (d) in respect of each such amount, the grounds for awarding or deducting the said amounts.

That is to say in the instant case the Judge has to decide separately claims for market value and injurious affection.

Section 38(2) reads:

> Every application under subsection (1) shall state fully the grounds on which objection to the award is taken, and at any hearing in Court no other grounds shall be given in argument, without leave of the Court.

On a plain reading of s. 38(2), we are of the opinion that the door is not completely shut for an objector to make a fresh claim or raise a new ground of objection to an award of the Collector in the course of the reference proceedings which he had failed to do at the enquiry before the Collector under s. 12 of the Act or in the application for reference to the Court under s. 38(1) of the Act. The objector must however, obtain the leave of the Court before he can do so. In view of s. 45(2) of the Act which provides:

> Save in so far as they may be inconsistent with anything contained in this Act, the provisions of the law for the time being in force relating to civil procedure shall apply to all proceedings before the Court under this Act,

the **leave of the Court** is obtained by making a separate application to the Court supported by an affidavit explaining the reasons for the additional grounds of objection in accordance with the Rules of the High Court 1980 for such application as a **preliminary step** before the hearing of the actual reference.

Such an application for leave will afford the Collector an opportunity to make the necessary inquiries to file an affidavit in reply and where necessary to object to the application. The additional ground should not be made, as was done here, by throwing it at the face of the Court for the first time at the hearing of the reference proper which caught the Collector and the Court by surprise. In the course of argument we were referred to the Federal Court case of *Collector of Land Revenue v. Looi Lam* [1981] 1 MLJ 300 which dealt with a claim for injurious affection at the reference stage when no such claim was made at the enquiry before the Collector. The question there was:

> must damages for injurious affection to the house under para. 2(d) be sued for separately or may they be claimed and awarded in the course of the reference under the Act.

The Federal Court held that the claim may be made at the reference stage. In that case the claim was made after the enquiry but before the Collector made his award although it was not possible to assess the extent of the damage at the time. Further, the owner specifically gave notice that she intended to make the claim in the application for reference to the Court. That case is not on all fours with the present and should not be taken as the procedural guide in making applications for leave of Court for additional grounds under s. 38(2) of the Act.

In the Court below, both parties relied on s. 4 of the First Schedule on the question whether the claim for injurious affection could be made at the reference stage. The appellants relied on s. 4(a) or (b) that it could so long as the total amount of compensation did not exceed RM160,000 per acre. The Collector relied on s. 4(b) and said the appellants could not because it made no such claim before the Collector. In the event, the learned Judge decided that the appellant is precluded under s. 4(b) from making the claim because it had not given sufficient reason to the Court to be allowed to do so.

With respect, we think the arguments at that stage should not have revolved on s. 4 of the Schedule at all because that section deals with the limitation on awards or amount of compensation and not with the grounds on which compensation should be awarded. Where as here, there are reasons (if any) for additional grounds, the application for leave of the Court should be made and dealt with under s. 38(2) of the Act and the Rules of the High Court 1980.

For the reasons stated, we would allow the appeal and set aside the decision of the learned Judge. In view of the conduct of this matter, there will be no order as to costs. Deposit to be refunded to the appellants.

Also found at [1992] 4 CLJ 2208